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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

DANIEL LEVIN; MARIA LEVIN; PARK LANE
 ASSOCIATES, L.P.; THE SAN FRANCISCO
 APARTMENT ASSOCIATION; and THE
 COALITION FOR BETTER HOUSING,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO,

Defendant.

No. 3:14-CV-03352-CRB

**PLAINTIFFS'
 OPPOSITION TO DEFENDANT
 CITY AND COUNTY
 OF SAN FRANCISCO'S
 ADMINISTRATIVE MOTION
 FOR LEAVE TO FILE
 SUPPLEMENTAL
 OPPOSITION TO MOTION
 FOR TEMPORARY
 RESTRAINING ORDER AND
 PRELIMINARY INJUNCTION**

Judge: Hon. Charles R. Breyer
 Courtroom 6, 17th Floor
 Hearing Date: August 22, 2014
 Time: 10:00 a.m.

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Defendant City and County of San Francisco (City) has filed an Administrative Motion for Leave to File Supplemental Opposition to Motion for Temporary Restraining Order and Preliminary Injunction. The basis for this motion is a recent factual development related to this case. In particular, the City notes that tenants in unit 704 of Plaintiff Park Lane Associates, L.P. (Park Lane), property suddenly vacated the unit on August 16, 2004. They did so despite having previously notified Park Lane in writing that they would vacate on August 25, 2014, and that they expected a payment of approximately \$143,000 under S.F. Admin. Code Section 37.9A(e)(3)(E) (the Ordinance) on August 25, 2014. *See* Exhibit A to Declaration of J. David Breemer (Breemer Dec.). After vacating early on August 16, 2014, the tenants in unit 704 demanded that Park Lane instantly give them the \$143,000+ Differential Payment. The City's motion notes that Park Lane has not yet made this payment to the recently departed tenants, though it neglects to note that this is because of the pending hearing in this Court on whether the Ordinance should be enjoined as applied to Park Lane, halting the payment at issue.

Park Lane does not oppose the City bringing the facts regarding the vacancy in unit 704 to the Court's attention. Indeed, Park Lane intended to update the Court on this very issue at the hearing on August 22, 2014. However, Park Lane *does* object to the City's characterization of the recent developments, and its suggestion that they somehow alleviate the harm faced by Plaintiffs Park Lane and Daniel and Maria Levin (Levins) or the necessity of preliminary relief from application of the Ordinance. The very recent departure of the tenants in Park Lane's unit 704—and their related demand for payment of approximately \$143,000 dollars under the challenged Ordinance—makes Plaintiffs' request for relief all the more urgent and necessary and the upcoming hearing all the more appropriate.

As noted above, in late July, Park Lane received a letter from the tenants in unit 704 informing Park Lane that those tenants would vacate their unit on August 25, 2014. In the same letter, the tenants demanded a payment under the Ordinance on August 25, 2014. *See* Breemer Dec., Exhibit A. This notice and money demand provided one reason for Park Lane to quickly move this Court for a temporary restraining order and preliminary injunction. However, it was hardly the only reason.

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Both the Levins and Park Lane have other tenants in their properties who could vacate Plaintiffs' properties at any time and demand immediate payment under the terms of the challenged Ordinance, just as the tenants in unit 704 have done. If Plaintiffs must pay a suddenly departing tenant, their constitutional and state law rights will be violated, their ability to judicially challenge the payment may be deemed to be waived, and they will have no way to get the money back. If they decline to pay, their ability to withdraw units from the rental market under the Ellis Act will be compromised, the tenants will be eligible to re-occupy Plaintiffs' property, against their will, and investments made in reliance on withdrawal of Plaintiffs' properties under the terms of the prior legal scheme will fall through. The situation in unit 704 of Park Lane's property simply brings these hardships to immediate reality.

In short, the sudden departure of the tenants in unit 704 and their demand for immediate payment under the challenged Ordinance highlights the untenable dilemma Plaintiffs face, the propriety of preliminary relief and the need for an immediate hearing on that request. Given the pending hearing, Park Lane decided to withhold payment to the tenants formerly in unit 704 until after the hearing. If Park Lane does not obtain relief from the payments demanded by the Ordinance, it will have to choose between paying the \$143,000 to the vacating tenants in 704 and thereby suffering an irreparable violation of its constitutionally protected property rights (as described more fully above) or refusing the payment and suffering an irreparable loss of its right to withdraw the subject unit from the rental market, an irreparable and unconstitutional physical occupation of its property, and irreparable restrictions on its rental rights for the next five years. The departure of the tenants in 704 and demand for payment does not alleviate the harm faced by Park Lane or the Levins; it confirms it.

DATED: August 21, 2014.

Respectfully submitted,

J. DAVID BREEMER
JENNIFER F. THOMPSON

By /s/ J. David Breemer
J. DAVID BREEMER

Attorneys for Plaintiffs